

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE M. HATCHER and U.S. POSTAL SERVICE,
GENERAL POST OFFICE, Houston, TX

*Docket No. 03-1934; Submitted on the Record;
Issued December 5, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of her claim pursuant to section 8128(a) of the Federal Employees' Compensation Act.

The Office accepted that, on April 6, 1992, appellant, then a 39-year-old letter sorting machine clerk, sustained a left shoulder strain while lifting a full tray of mail. Appellant returned to regular duty with no accommodations on approximately April 30, 1992. On July 28, 1995 appellant filed a claim for a recurrence of disability, which was denied by decision dated September 21, 1995 on the grounds of insufficient medical evidence.

Appellant also filed a claim on September 17, 2001 for a September 21, 2000 recurrence of disability, alleging that back and knee injuries required her to use her left arm for support, aggravating the accepted left shoulder strain.¹ By decision dated January 31, 2002, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence did not establish a causal relationship between the accepted left shoulder strain and any medical condition.

Appellant disagreed with this decision and in a June 5, 2002 letter, received July 1, 2002, requested reconsideration. She asserted that her September 17, 2001 claim form and a February 9, 2002 narrative report from Dr. Thomas Melhoff, an attending Board-certified orthopedic surgeon, established the requisite causal relationship. Dr. Melhoff diagnosed osteoarthritis of both shoulders, possibly aggravated in the right shoulder by the 1994 motor vehicle accident.

¹ In a December 18, 2001 letter, the Office asserted that appellant's claim for recurrence of disability was previously denied by the September 21, 1995 decision.

By decision dated February 3, 2003, the Office denied reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review. The Office found that appellant's June 5, 2002 letter did not contain new, relevant evidence or legal argument. The Office further found that Dr. Melhoff's report was not relevant as it mentioned the accepted April 6, 1992 left shoulder strain only as part of the history, but did not address the issue of causal relationship.²

Appellant filed her appeal with the Board on August 1, 2003.

The Board finds that the Office improperly denied appellant's request for reconsideration under section 8128.

The only decision over which the Board has jurisdiction is the Office's February 3, 2003 decision denying appellant's request for a review of the merits of the case. Because more than one year has elapsed between the issuance of the Office's decision dated January 31, 2002 and August 1, 2003, the date appellant filed her appeal before the Board, the Board lacks jurisdiction to review the merit decision dated January 31, 2002.³

The Office procedure manual provides: "When a reconsideration decision is delayed beyond 90 days and the delay jeopardizes the claimant's right to have review of the merits of the case by the Board, the Office should conduct a merit review."⁴

In this case, the most recent merit decision was the Office's January 31, 2002 decision. Appellant requested reconsideration on June 5, 2002. The Office did not issue a decision on appellant's June 5, 2002 request for reconsideration until February 3, 2003. As this was more than a 90-day delay and it jeopardized appellant's right to have the Board review the merits of her claim, the Office should have issued a decision on the merits of her claim in conformance with its procedures.⁵

² Following issuance of the February 3, 2003 decision, appellant submitted new factual and medical evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. Appellant may submit this evidence to the Office accompanying a written request for reconsideration. 20 C.F.R. § 501.2(c).

³ See 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (June 2002).

⁵ *Geoma R. Munn*, 50 ECAB 242 (1999); *Debra E. Stoler*, 43 ECAB 561 (1992); *Carlos Tola*, 42 ECAB 337 (1991) (remanding cases for merit review where the Office delayed issuance of reconsideration decisions).

The decision of the Office of Workers' Compensation Programs dated February 3, 2003 is hereby set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
December 5, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member